

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

SAIHB SINUHE HALIL,

Plaintiff and Appellant,

v.

MEDICAL BOARD OF CALIFORNIA,

Defendant and Respondent.

B208685

(Los Angeles County
Super. Ct. No. BS111724)

APPEAL from a judgment of the Superior Court of Los Angeles County. James C. Chalfant, Judge. Affirmed.

Law Office of Arnold M. Johnson and Arnold M. Johnson for Plaintiff and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Paul C. Ament and Chris Leong, Deputy Attorneys General, for Defendant and Respondent.

Respondent Medical Board of California (“Board”) revoked appellant Saihb Sinuhe Halil’s (“Halil”) physician and surgeon’s license as a result of, among other things, his gross negligence and dishonest and corrupt acts related to three abortions he performed in the late-1980s. This appeal arises from Halil’s second petition seeking to have his license reinstated. The Board denied his second petition on the ground that Halil failed to demonstrate he had been successfully rehabilitated. Halil filed a petition for writ of mandate with the trial court, seeking to reverse the Board’s decision. The trial court entered judgment denying the petition, and Halil appealed.

We conclude that substantial evidence supports the Board’s finding that Halil failed to show by clear and convincing evidence that he is rehabilitated with respect to his past dishonest conduct. Accordingly, we affirm.

BACKGROUND

1. *The Revocation of Halil’s Medical License.*

Halil received his physician and surgeon’s license in 1982. Between 1987 and 1988, while performing abortions, Halil seriously injured three patients, failed to disclose those injuries to the patients, and then failed to fully acknowledge his incompetent and inappropriate conduct during the subsequent administrative investigation. Because the “nature and severity” of the conduct that prompted the Board to revoke Halil’s license is also relevant to its determination not to reinstate,¹ we briefly describe that conduct here.

In the first abortion, Halil failed to conduct a pre-operation physical exam of the patient, perforated the patient’s uterus, ruptured her colon, and failed to remove part of the fetus, which had been pushed into the patient’s abdomen. Halil did not disclose to the patient the extent of her injuries, nor did he evaluate the patient before she went home. Four days after the procedure, the patient was so weak she could not walk. She returned to see Halil, who did a superficial examination, and then told the patient she should go to

¹ California Code of Regulations, title 16, section 1360.2.

the hospital. Once admitted to the hospital, the patient stayed in the ICU for three days, following surgery that was required as a result of Halil's actions and inactions, including his failure to disclose to the patient the extent of her injuries.

A year later, in the course of performing an abortion, Halil again perforated a patient's uterus and her intestines. Although the patient awoke from the procedure in severe pain, Halil did not disclose to her the extent of her injuries and did not evaluate her condition before sending her home. After experiencing increasing pain, the patient admitted herself to a hospital, where she underwent the first of two surgeries as a result of Halil's actions. She was in and out of the hospital for approximately one month.

The third case occurred a few weeks after the second. Halil again failed to perform a pre-operation physical examination of the patient. At some point during the procedure, the patient was in extreme pain and losing an unusual amount of blood, yet Halil did nothing to assess her condition. Suffice it to say, the procedure was not conducted properly, was never actually finished, and ended with Halil using a non-sterile scissors to cut off a portion of the uterus, one ovary and one fallopian tube, which he had inexplicably pulled from the patient's body. Halil finally stopped the procedure and had the office manager drive the patient to a hospital 25 minutes away. At the hospital, the patient underwent surgery, during which it was discovered, among other things, that the fetus had been pushed into the abdominal cavity and her small intestine was damaged. During the patient's lengthy recovery period, Halil initiated and encouraged an inappropriate personal relationship with her.

Following these three procedures, the Board initiated an administrative investigation and held a hearing. At the hearing, Halil was less than forthcoming about his incompetence and inappropriate behavior with respect to the three subject abortions. For example, he stated he did not remember the third patient, whom he had rendered sterile and with whom he had initiated an improper relationship. In 1995, the Board revoked Halil's medical license.

2. *Halil's First Petition for Reinstatement.*

In 2001, Halil filed a petition for penalty relief, seeking reinstatement of his medical license. In support of his petition, Halil submitted, among other documents, letters of reference from various physicians and certificates showing he had attended continuing medical education courses since his license had been revoked. Administrative Law Judge Jonathan Lew presided over the hearing, at which Halil testified.

ALJ Lew concluded Halil had not been sufficiently rehabilitated and issued a proposed decision to deny Halil's petition for reinstatement. The ALJ cited, among other deficiencies, continuing concerns with Halil's honesty. Halil represented that, if his license were reinstated, three physicians were willing to have him work with them. Halil also represented that he had fully disclosed to those physicians the nature of his actions which led to the revocation of his license. The Board was unable to confirm these representations. In fact, when speaking with a Board investigator, one of those physicians indicated that he did not intend to offer Halil a position. The Board adopted ALJ Lew's proposed decision.

3. *Halil's Second Petition for Reinstatement.*

In 2005, Halil filed a second petition for penalty relief, from which this appeal arises. Administrative Law Judge Daniel Juarez presided over the hearing on Halil's second petition.

Halil was the only witness to testify on his behalf at the hearing on his petition. Halil also submitted new letters of reference from multiple physicians and certificates of completion of continuing medical education courses. His letters of reference were generally more detailed than those submitted with his first petition. Halil also submitted a detailed and generally positive report from his psychologist.

ALJ Juarez issued a proposed decision recommending reinstatement with multiple conditions. The Board refused to adopt the ALJ's proposed decision. Instead, the Board issued a decision denying reinstatement. The Board explained that Halil's testimony at his second hearing "leaves the [Board] less than convinced that he has truly been rehabilitated." The Board found that Halil had failed to demonstrate through clear and

convincing evidence that he understood and appreciated the extent of his past dishonesty and that he would not repeat such behavior in the future. According to the Board, this deficiency manifested itself in various ways during the hearing on Halil's second petition.

First, the Board was troubled on two levels by Halil's references to the fact that abortions are "blind" procedures. The Board noted that, after stating the procedures were "blind," Halil then admitted that not all aspects of the procedures at issue were in fact "blind." For example, in one case, Halil saw the organs he had pulled from the patient's body and used a scissors to cut them. The Board was also troubled by Halil's apparent use of the "blind" factor as an excuse for not disclosing the patient's injuries to them. The Board found that Halil was relying "on a medical procedure as a way of explaining his dishonest actions."

Second, the Board determined that Halil "does not appear to accept full responsibility for his actions." Although Halil admitted his mistakes and agreed that his actions following the abortions compounded his patients' injuries, the Board was struck by what Halil did not admit. "When asked what he should have done differently, Petitioner responded that he needed to realize his own limitations and the limitations of the facility where he was working. [citation.] It is unclear to the [Board] how the limitations of a facility or the proximity of an anesthesiologist would affect or impact a physician and surgeon's obligations to inform patients of their conditions and render him unable to make competent and forthright decisions about their medical care." The Board was similarly unimpressed with Halil's response when asked why one of his patients did not go to the hospital given her serious medical condition. Halil "responded twice that he **might** not have disclosed all that had happened to her. [citation.]"

The Board explained that "the reporting of the patient's true condition to the patient [] is a fundamental responsibility of a physician and surgeon." The Board found that Halil had "not acknowledged this critical omission and [had] not provided the [Board] with strong assurance that such egregious conduct will not be repeated."

Halil filed a petition for writ of mandate with the superior court seeking an order setting aside the Board's decision and ordering the Board to reinstate his license. The superior court entered judgment denying the petition.

DISCUSSION

1. *Standard of Review.*

Where the Board has determined not to reinstate a revoked license, our review is identical to that of the trial court: we review the administrative record to determine whether the Board's findings are supported by substantial evidence. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1396 (*Flanzer*).) We do not determine, as the Board incorrectly asserts, whether the *trial court's* findings are supported by substantial evidence. If substantial evidence supports the Board's findings, this court will not set aside the Board's judgment "even though such judgment was not supported by the weight of the evidence." (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315 (*Housman*).)

2. *Halil's Burden on Application for Reinstatement.*

In seeking reinstatement of his medical license, Halil was required to satisfy a demanding burden. "[I]t is important to bear in mind that in a proceeding for the restoration of a revoked license, the burden at all times rests on the petitioner to prove that he has rehabilitated himself and is entitled to have his license restored, and not on the board to prove to the contrary.' As an applicant for reinstatement, [Halil] is not in the position of an untried newcomer, but a fallen licentiate. Under the circumstances, it is not unreasonable for the Board to be exacting in its requirements as to proof of reform." (*Flanzer, supra*, 220 Cal.App.3d at p. 1398, quoting *Housman, supra*, 84 Cal.App.2d at p. 315.)

The Board will not reinstate a doctor's medical license unless the doctor demonstrates by clear and convincing evidence that he or she has been rehabilitated. (*Housman, supra*, 84 Cal.App.2d at p. 316.) This is true because "the purpose of the Board is to protect the health and safety of the public. . . . and [] although the Board must promote the goal of rehabilitating the erring licensee whenever possible, 'Where rehabilitation and protection are inconsistent, protection shall be paramount.' ([Bus. & Prof. Code, § 2229], subd., (c).)." (*Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 9-10.)

Thus, as the parties agree, Halil was required to prove to the Board "'by the most clear and convincing evidence that efforts made towards rehabilitation have been successful.'" (*In re Menna* (1995) 11 Cal.4th 975, 986. See also *Housman, supra*, 84 Cal.App.2d at p. 315.)

3. *Relevant Considerations.*

In determining whether Halil met his burden, the Board was entitled to "consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability." (Bus. & Prof. Code, § 2307, subd. (e).) In evaluating a petition for reinstatement, the Board considers the nature and severity of the acts that led to revocation of the license, evidence of any subsequent acts which also could be considered as grounds for denial of the license, the time that has elapsed since commission of the acts, and any evidence of rehabilitation submitted by the applicant. (Cal. Code Regs., tit. 16, § 1360.2.)

4. *Substantial Evidence Supports the Board's Essential Findings.*

Halil did not convince the Board of his rehabilitation with respect to a crucial element of his past behavior—namely, his dishonesty in dealing with his patients and the Board. "In determining whether [petitioner's] burden has been met, the evidence of present character must be considered in the light of the moral shortcomings which resulted in the imposition of discipline." (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.) "It is only reasonable that the person seeking reinstatement . . . should be required

to present stronger proof of his present honesty and integrity than one seeking admission for the first time whose character has never been in question.’” (*Housman, supra*, 84 Cal.App.2d at p. 315.)

The Board was appropriately concerned with Halil’s dishonesty. “It is unnecessary to describe the extent to which that particular relationship [between doctor and patient] is based on utmost trust and confidence in the doctor’s honesty and integrity.” (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 470.) Halil has exhibited various dishonest behaviors over the course of many years. For example, Halil failed to disclose to his patients the serious medical conditions he had caused. Halil was not candid with the Board during the initial revocation proceedings. Similarly, during his first reinstatement proceedings, it appeared he had not been entirely forthright with either the Board or the individuals who wrote letters in support of his petition.

Although Halil agreed at the most recent hearing that he had failed to make full disclosures to his patients and that such conduct was wrong and compounded the problems, the Board was troubled nonetheless by other portions of his testimony. In explaining his failure to inform his patients of their injuries, Halil testified that he was scared and that the procedures he had performed were “blind” so that he was unsure of what injuries might have occurred. Although true to a certain extent (i.e., the abortions performed involved blind procedures inside each patient’s body), this statement was inaccurate with respect to procedures Halil performed that he could clearly see or otherwise perceive. Halil also failed to perform post-operation tests or to evaluate the patients, which would have allowed him to assess the patient’s condition. Thus, while an abortion is generally a “blind” procedure, this alone cannot excuse or even account for Halil’s failure to act or disclose crucial patient information when there are other clear indicators of severe injury.

In addition, Halil was equivocal when asked whether he had disclosed to one of his patients the severity of her condition. He stated “[t]here is a possibility that I did not

disclose everything that was - - that had happened.”² But the Board had already determined in its revocation decision that Halil did not disclose the patient’s injuries to her. Thus, this testimony bears on Halil’s honesty and his understanding of the importance of full disclosure to his patients.

Halil argues that the Board made improper and illogical inferences from his testimony. With one minor exception,³ we do not agree. In light of Halil’s past dishonesty, the Board was entitled to be exacting in its requirements as to proof of his rehabilitation with respect to honesty. (*Flanzer, supra*, 220 Cal.App.3d at p. 1398.) It was not unreasonable for the Board to be troubled by Halil’s repeated reference to and reliance on the fact that the procedures at issue were “blind” procedures, when there were visible and other perceivable indicators of severe injury. It was within the Board’s discretion to find that, to a certain extent, Halil was attempting to hide behind the “blind” aspects of the abortions. At the least, the Board could reasonably find that Halil was missing the point. Similarly, the Board was within reason to be troubled by Halil’s testimony that there was a “possibility” that he did not disclose everything to one of his

² We do not agree with the Board’s position that Halil made this statement twice. After Halil testified that it was “possible” he did not disclose everything, counsel for the Board simply restated Halil’s testimony. Halil then agreed with counsel’s restatement of his testimony.

³ At the most recent hearing, Halil was asked “what types of things - - given the fact that, for example, there [were] a couple of situations [where] you perforated the uterus . . . What kinds of things would you have - - should you have done that you’re aware of now?” Halil responded with examples of things he should have done differently, such as having an anesthesiologist available and recognizing his own limitations as well as those of the facility where he worked. The Board takes issue with the fact that Halil omitted to mention that he also should have disclosed to his patients that he had seriously injured them. The Board interpreted this omission as further proof of Halil’s incomplete rehabilitation with respect to honesty. However, the question did not ask for an exhaustive list of everything he should or could have done differently, nor did it ask for reasons why Halil failed to make full disclosures to his patients. The question simply asked for examples of things he should have done differently. And Halil gave examples. The Board’s interpretation of Halil’s answer is unsupported. However, this does not change our conclusion that the Board’s finding of incomplete rehabilitation as to honesty is otherwise supported by substantial evidence.

patients, when clearly—as the Board had previously found—he had not disclosed the extent or severity of her injuries to her.

Although reasonable minds might differ, our role is not to substitute one reasonable conclusion or inference for another. Under the substantial evidence rule, “when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court [or, here, the Board]. *If such substantial evidence be found, it is of no consequence that the [Board] believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion.*” (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 874.)

Having determined that substantial evidence supports the Board’s finding that Halil has not shown by clear and convincing evidence sufficient rehabilitation, we conclude that the Board’s decision denying Halil’s second petition for penalty relief is supported by the findings.

DISPOSITION

The judgment denying Halil’s petition for writ of mandate is affirmed.

NOT TO BE PUBLISHED.

TUCKER, J.*

We concur:

MALLANO, P. J.

ROTHSCHILD, J.

* Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.